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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BENJAMIN WANG,

Plaintiff,

v.

**THERAPEUTIC HEALTH
COLLECTIVE ,**

Defendant.

Case No.:

**COMPLAINT FOR DAMAGES
JURY TRIAL DEMANDED**

1. BENJAMIN WANG (“Plaintiff”) brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of THERAPEUTIC HEALTH COLLECTIVE (“Defendant”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

2. The TCPA was designed to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiff.

1 “Voluminous consumer complaints about abuses of telephone technology – for
2 example, computerized calls dispatched to private homes – prompted Congress to
3 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

4 3. In enacting the TCPA, Congress intended to give consumers a choice
5 as to how corporate similar entities may contact them, and made specific findings
6 that “[t]echnologies that might allow consumers to avoid receiving such calls are
7 not universally available, are costly, are unlikely to be enforced, or place an
8 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
9 support of this, Congress found that
10

11 [b]anning such automated or prerecorded telephone
12 calls to the home, except when the receiving party
13 consents to receiving the call or when such calls are
14 necessary in an emergency situation affecting the health
15 and safety of the consumer, is the only effective means
of protecting telephone consumers from this nuisance
and privacy invasion.

16 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
17 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
18 TCPA’s purpose).
19

20 4. Congress also specifically found that “the evidence presented to the
21 Congress indicates that automated or prerecorded calls are a nuisance and an
22 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
23 *Mims*, 132 S. Ct. at 744.
24

25 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
26 TCPA case:
27
28

1 The Telephone Consumer Protection Act ... is well
2 known for its provisions limiting junk-fax
3 transmissions. A less-litigated part of the Act curtails
4 the use of automated dialers and prerecorded messages
5 to cell phones, whose subscribers often are billed by the
6 minute as soon as the call is answered—and routing a
7 call to voicemail counts as answering the call. An
8 automated call to a landline phone can be an
9 annoyance; an automated call to a cell phone adds
10 expense to annoyance.

11 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

12 **JURISDICTION AND VENUE**

13 6. This Court has federal question jurisdiction because this case arises
14 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
15 *LLC*, 132 S. Ct. 740 (2012).

16 7. Venue is proper in the United States District Court for the Central
17 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
18 Defendant is subject to personal jurisdiction in the County of Los Angeles, State
19 of California and Plaintiff resides within the County of Los Angeles, State of
20 California.

21 **PARTIES**

22 8. Plaintiff is, and at all times mentioned herein was, a citizen and
23 resident of the State of California. Plaintiff is, and at all times mentioned herein
24 was, a “person” as defined by 47 U.S.C. § 153 (10).

25 9. Plaintiff is informed and believes, and thereon alleges, that
26 Defendant is, and at all times mentioned herein was, a corporation whose State of
27 Incorporation is California and principal place of business is in the City of Los
28 Angeles, State of California. Defendant, is and at all times mentioned herein was,
a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff

1 alleges that at all times relevant herein Defendant conducted business in the State
2 of California and in the County of Los Angeles, and within this judicial district.

3 **FACTUAL ALLEGATIONS**

4 10. At all times relevant, Plaintiff was a citizen of the State of California.
5 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
6 U.S.C. § 153 (10).

7 11. Defendant is, and at all times mentioned herein was, a corporation
8 and a “person,” as defined by 47 U.S.C. § 153 (10).

9 12. At all times relevant Defendant conducted business in the State of
10 California and in the County of Los Angeles, within this judicial district.

11 13. Beginning sometime on or around December of 2013, Defendant
12 began to utilize Plaintiff’s cellular telephone number, ending in 8249, in an
13 attempt to solicit Plaintiff’s business by sending unsolicited/unauthorized spam
14 text messages.
15

16 14. As an illustrative example, on December 31, 2013, Defendant sent
17 the following text message(s) to Plaintiff’s cellular telephone at 10:59am and
18 11:18am:

19
20 <SUBJECT: THC COLLECTIVE>

21 NEW YEARS SPECIAL!

22 \$10 OFF any top shelf 8th, \$25 8ths all day, \$10
23 wax..come celebrate with food music and video games.
24

25 15. Since December 31, 2013 at 8:27am, Plaintiff has sent at least eight
26 (8) reply text messages to Defendant requesting that Defendant cease delivering
27 spam text messages to his cellular telephone via a variety of commands, such as
28 “stop”, “stop please”, “please remove my number from this list”, and “remove.”

1 16. Notwithstanding, Defendant continued with its barrage of incessant
2 spam text messages to Plaintiff's phone.

3 17. Further, Plaintiff has sent Defendant at least three (3) electronic mail
4 (email) messages, those being on March 5, 2014, March 6, 2014 and March 10,
5 2014, demanding that Defendant cease delivering spam text messages to his
6 cellular telephone.

7 18. Notwithstanding, Defendant continued with its barrage of incessant
8 spam text messages to Plaintiff's phone.

9 19. Plaintiff went as far as to place at least four (4) telephone calls to
10 Defendant, those being March 8, 2014, March 10, 2014 (twice) and March 11,
11 2014 seeking to speak with an agent or employee to demand a cease of
12 Defendant's spam text messages.

13 20. In total, despite Plaintiff making at least fifteen (15) attempts to halt
14 Defendant's spam text messages, Defendant has sent Plaintiff approximately **one**
15 **hundred (100)** spam text messages to his cellular telephone seeking to solicit
16 Plaintiff's business.

17 21. The texts Defendant placed to Plaintiff's cellular telephone were
18 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
19 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

20 22. This ATDS has the capacity to store or produce telephone numbers
21 to be dialed, using a random or sequential number generator.

22 23. The telephone number that Defendant, or its agents, called was
23 assigned to a cellular telephone service for which Plaintiff incurs a charge for
24 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

25 24. These text messages constituted calls that were not for emergency
26 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

1 25. As of December 31, 2013, Plaintiff's first reply text to Defendant
2 demanding Defendant "stop" sending him such spam text messages, Plaintiff
3 effectively revoked any permission or invitation Defendant had, if it even existed
4 to begin with, to send Plaintiff automated spam text messages to his cellular
5 telephone. Thus, as of December 31, 2013, Plaintiff did not provide Defendant or
6 its agents with prior express consent to receive spam text messages, pursuant to
7 47 U.S.C. § 227 (b)(1)(A).

8 26. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
9 § 227(b)(1).
10

11 **FIRST CAUSE OF ACTION**
12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
13 **PROTECTION ACT**
 47 U.S.C. § 227 ET SEQ.

14 27. Plaintiff incorporates by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.

16 28. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

19 29. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
20 seq, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
21 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

22 30. Plaintiff is also entitled to and seeks injunctive relief prohibiting
23 such conduct in the future.
24

25 ///

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**
2 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
3 **TELEPHONE CONSUMER PROTECTION ACT**
4 **47 U.S.C. § 227 ET SEQ.**

5 31. Plaintiff incorporates by reference all of the above paragraphs of this
6 Complaint as though fully stated herein.

7 32. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple knowing and/or willful violations of the TCPA, including but not
9 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
10 seq.

11 33. As a result of Defendant's knowing and/or willful violations of 47
12 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$1,500.00 in statutory
13 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

14 34. Plaintiff is also entitled to and seeks injunctive relief prohibiting
15 such conduct in the future.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff the
18 following relief against Defendant:

19 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
20 **TCPA, 47 U.S.C. § 227 ET SEQ.**

21 35. As a result of Defendant's negligent violations of 47 U.S.C. §
22 227(b)(1), Plaintiff seeks \$500.00 in statutory damages, for each and every
23 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

24 36. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
25 such conduct in the future.

26 37. Any other relief the Court may deem just and proper.
27
28

1 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
2 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

3 38. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227(b)(1), Plaintiff seeks \$1,500.00 in statutory damages, for each and
5 every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

6 39. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
7 such conduct in the future.

8 40. Any other relief the Court may deem just and proper.

9 **TRIAL BY JURY**

10 41. Pursuant to the seventh amendment to the Constitution of the United
11 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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14 Respectfully submitted this 7th day of April, 2014.

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17 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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19
20 By: /s/ Todd M. Friedman
21 Todd M. Friedman
22 Law Offices of Todd M. Friedman
23 Attorney for Plaintiff
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